U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30558370

Date: MAR. 19, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a microbiology researcher, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 C.F.R. § 1153(b)(1)(A). This category makes immigrant visas available to noncitizens who demonstrate "sustained national or international acclaim" and provide "extensive documentation" of their achievements' recognition in their respective fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met two initial evidentiary requirements – one less than needed to obtain a final merits determination. On appeal, the Petitioner contends that he met the requisite third criterion by submitting evidence of his "original contributions . . . of major significance" to the microbiology field. He also asserts that he satisfies the remaining requirements for the requested immigrant visa classification.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has submitted evidence of original contributions of major significance to the field. We will therefore withdraw the Director's decision and remand the matter for a final merits determination.

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means a level of expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either of the evidentiary requirements above, U.S. Citizenship and Immigration Services (USCIS) must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

## II. ANALYSIS

### A. The Petitioner

The record shows that the Petitioner, an Indian native and citizen, earned: a bachelor of science degree in biology in India; a master of science degree in bioinformatics in Scotland; and a doctoral degree in microbial ecology in Austria. From 2017 to 2022, he worked as a post-doctoral fellow in the United States. He now serves as an assistant professor of agriculture and environment at a U.S. university.

The Petitioner researches microbes – such as bacteria, fungi, and viruses – and small molecules, or metabolites. Using bacteria, he develops pathogen biocontrol agents. He has researched biosynthetic pathways and small molecules in both plants and humans. He has studied gut bacteria in cases of pediatric obsessive compulsive disorder and analyzed sequencing data to determine microbial markers for brain disorders.

The Petitioner does not assert – nor does the record indicate – his receipt of a major international award. *See* 8 C.F.R. § 204.5(h)(3) He must therefore meet at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's findings that the Petitioner met two initial evidentiary requirements: evidence of his participation as a judge of other's work in the microbiology field; and proof of his authorship of scholarly articles in the field. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi).

The Petitioner claims that he also met a requisite third evidentiary criterion by submitting evidence of original contributions of major significance to the field. *See* 8 C.F.R. § 204.5(h)(3)(v). Thus, we will review the Director's finding regarding that evidentiary requirement.

[1] If the standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

B. Original Contributions of Major Significance

To meet this criterion, a petitioner must submit "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). USCIS should first determine whether a noncitizen has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1), www.uscis.gov/policy-manual. If so, the Agency should then determine whether any are of "major significance." *Id.*

Evidence of significant contributions can include published research that has provoked widespread commentary on its importance from others in the field, or documentation that research generated a high amount of citations relative to others' work in the field. *Id.* When determining whether original contributions have major significance, detailed letters from experts in the field explaining the nature and significance of the contributions may provide valuable context, especially if accompanied by corroborating documentation. *Id.*

Contrary to the Director's decision, the Petitioner has demonstrated his submission of evidence of contributions of major significance in the microbiology field. At the time of the petition's filing in 2022, he established his authorship of 16 articles in peer-reviewed, scientific journals in the field and a chapter in a book about salivary bioscience. The Director stated that "a particular article cannot be considered influential if the evidence does not show that other researchers have relied upon the author's findings." But the Petitioner submitted evidence that, since 2017, his articles had generated almost 600 citations in his field.[2]

The Director found that:

> while a moderate amount of citations to the beneficiary's work over [the] years demonstrates awareness of the work and its value, not every researcher who performs moderately valuable research has inherently made an original contribution to the academic field as a whole.

The Petitioner, however, demonstrated that, for their years of publication, 12 of his 16 articles were among the top 10% cited in the microbiology field. The Director stated that "the comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in the beneficiary's field." But, under USCIS policy, "documentation that [published research] has been highly cited relative to others' work in that field . . . may be probative of the significance of the person's contributions to the field of endeavor." 6 *USCIS Policy Manual* F.(2)(B)(1).

Noting the Petitioner's claim of "notable" citations to his work, the Director stated:

> [T]here is no evidence in the record to demonstrate the reason the citations are notable. The record contains letters that provide opinions on the beneficiary's work, but they do not evaluate and clarify the reason the citations are notable or the impact of the "notable" citations on the field as a whole.

[2] The Director mistakenly described the figure as the number of citations to the Petition's work since 2011.

But the Petitioner submitted detailed letters from seven researchers in the microbiology field, six of whom have never worked with him. *See, e.g., Goncharov v. Allen*, No. 3:21-CV-1372-B, 2022 WL 17327304, *5 (N.D. Tex. Nov. 29, 2022) (citations omitted) ("Courts have routinely affirmed agency decisions that held § 204.5(h)(3)(v) requires substantial influence beyond one's employers, clients, or customers.") The letters describe three of the Petitioner's contributions in the microbiology field as significant.

First, the letters indicate the Petitioner's discovery of microbes in the human mouth that have led to advancements in fighting dental diseases, including tooth decay and severe gum inflammation. He found 100 previously unclassified biosynthetic gene clusters and identified about 2,500 biosynthetic pathways that exhibit differences between patients with and without dental diseases. His work demonstrated the importance of gene clusters in maintaining a proper bacterial equilibrium in the mouth to prevent disease. A microbiology professor at a German university wrote that the Petitioner "has improved our state of knowledge regarding the oral biome to an extent that few others in the field presently match." Further, an assistant professor of microbiology and molecular genetics at a U.S. university wrote that the Petitioner's work "is not merely of interest to those of us in the field. His data is applicable to severe diseases, facilitating more reliable, early detection, as well as a means of countering these conditions."

Second, the letters indicate the Petitioner's development of an interface allowing researchers to analyze mass spectrometry data on a large scale. A U.S. pharmacology and pediatrics professor wrote that the Petitioner's "creation of a database and methodology that compiles information from the wider research community and identifies certain compounds related to [medical] conditions supports a more advanced and collaborative effort for fighting diseases." A central metabolism professor at a German university wrote that the Petitioner's interface "has provided a means of bringing information together and using it to obtain valuable insight into the human body and human health" and "guiding the production of more effective targeted therapies."

Finally, the letters state the Petitioner's discovery of new surfactin molecules derived from plant microbiomes. He found that the genomes of many plant-based bacteria contain numerous gene clusters encoding enzymes involved with the production of lipopeptides and polyketides that bacteria from other environments lack. His work indicates the importance of the enzymes for plant-microbe interactions. He also found one bacterium type with strong anti-fungal properties that can protect many crops from harmful microbes and environmental threats. A microbiology professor emeritus at a U.S. university wrote that the Petitioner's work "has revealed underlying genetic processes involved in [the] protection [of plants]." The professor emeritus stated: "Given the necessity of agriculture in the United States, such expansion of our knowledge in this area is of great benefit to many industries and the country as a whole."

The Director further found that "the letters describe the future impact the [petitioner's] research may lead to but fail to describe how his research findings and results have been of major significance in the field." But, contrary to the Director's finding, the letters discuss immediate applications of the Petitioner's work. For example, the letters indicate that researchers use his mass spectrometry interface. A pharmacy professor at a South Korean university wrote that she used the Petitioner's mass spectrometry tools to examine medical properties of plants used in traditional East Asian medicine. She stated: "[W]e found that there were chemical properties supporting the medicinal use

of many of the plants investigated." Also, the letters indicate that researchers have built on the Petitioner's work to make other major, microbiological discoveries. For example, according to the U.S. pharmacology and pediatrics professor, a researcher examined one of the gene clusters that the Petitioner discovered in the human mouth and found a compound that suppresses white blood cells and may help prevent oral cancers.

The Director stated: "Letters of recommendation written by experts may be helpful, but the major significance of the [petitioner's] work must be demonstrated by preexisting, independent, and objective evidence." But neither regulations, case law, nor USCIS policy indicate that evidence in existence before a petition's filing carries more weight than new materials, such as expert opinion letters.[3] *See Rubin v. Miller*, 478 Fed. Supp. 3d 499, 504-05 (S.D.N.Y. 2020) (stating that USCIS policy and case law focus "on the substance of opinion letters and not when they were written"). In another extraordinary ability case, a federal judge rejected USCIS' finding that an original contribution "must be demonstrated by preexisting, independent, and corroborating evidence." *Chursov v. Miller*, No. 18 Civ. 2886, 2019 WL 2085199, **3-4 (S.D.N.Y. May 13, 2019) (finding that USCIS reviewed letters from professionals in the field "without adequate consideration of the light they shed on the significance of scholarly publications"); *see also* 6 *USCIS Policy Manual* F.(2)(B)(1) ("Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance.") Thus, we reject the Director's preference for preexisting evidence.

Contrary to the Director's decision, the Petitioner has submitted evidence of original contributions of major significance in the microbiology field. We will therefore withdraw the Director's contrary finding.

C. Final Merits Determination

Because the Petitioner has met at least three of the initial evidentiary criteria, USCIS must now make a final merits determination on his eligibility for this EB-1 classification. The Director did not make such a determination. Rather than decide the outcome in the first instance, we will remand the matter.

On remand, the Director should make a final merits determination regarding the Petitioner's qualifications for classification as a noncitizen with extraordinary ability. To establish eligibility, he must demonstrate that he has sustained national or international acclaim in his field and that his achievements have been recognized, identifying him as one of that small percentage who has risen to the field's very top. The Director must consider any potentially relevant evidence of record, even if it does not fit one of the initial evidentiary criteria. *See generally* 6 *USCIS Policy Manual* F.(2)(A)(2). The petition's approval or denial depends on the type and quality of the Petitioner's evidence not on assumptions about his failure to address other criteria. *Id.*

[3] A petitioner must establish eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). But a petitioner may submit evidence regarding their eligibility- such as letters or affidavits - that came into existence after the petition's filing. The record indicates that three of the Petitioner's seven expert opinion letters bear dates after the petition's filing.

## III. CONCLUSION

The Petitioner has met at least three of the initial evidentiary requirements. USCIS must now make a final merits determination regarding his eligibility as a noncitizen with extraordinary ability.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.